

# **EXHIBIT 1**

1 RONALD RUS, #67369  
rrus@rusmiliband.com  
2 LEO J. PRESIADO, #166721  
lpresiado@rusmiliband.com  
3 RUS, MILIBAND & SMITH  
A Professional Corporation  
4 Seventh Floor  
2211 Michelson Drive  
5 Irvine, California 92612  
Telephone: (949) 752-7100  
6 Facsimile: (949) 252-1514

7 Attorneys for Defendants  
8 THUNDERWOOD HOLDINGS, INC.,  
BRIAN DUNNING, and BRIANDUNNING.COM

9  
10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 EBAY INC.,

14 Plaintiff,

15 vs.

16 DIGITAL POINT SOLUTIONS, INC.;  
17 SHAWN HOGAN; KESSLER's FLYING  
CIRCUS; THUNDERWOOD HOLDINGS,  
18 INC.; TODD DUNNING; DUNNING  
ENTERPRISES, INC.; BRIAN DUNNING;  
19 BRIANDUNNING.COM; and DOES 1-20,

20 Defendants.

CASE NO. C 08-4052 JF

**RESPONSES OF DEFENDANT  
THUNDERWOOD HOLDINGS, INC.  
TO FIRST SET OF  
INTERROGATORIES PROPOUNDED  
BY PLAINTIFF EBAY INC.**

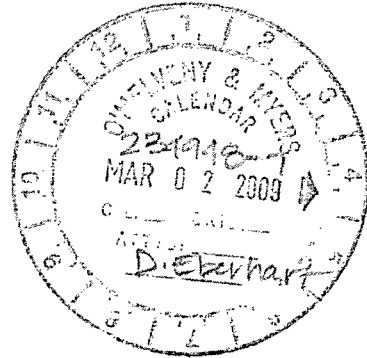
21  
22 PROPOUNDING PARTY: PLAINTIFF EBAY INC.

23 RESPONDING PARTY: DEFENDANT THUNDERWOOD HOLDINGS, INC.

24 SET NO.: ONE (1)

25 Defendant Thunderwood Holdings, Inc. ("Defendant" and/or "Responding  
26 Party") hereby responds to the First Set of Interrogatories (Nos. 1-2) propounded by Plaintiff  
27 eBay Inc. ("Plaintiff" and/or "Propounding Party") as follows:

28 / / /



1 GENERAL STATEMENT

2 Defendant's Motion to Dismiss Plaintiff's First Amended Complaint was  
3 granted by Order entered February 24, 2009. As such, Plaintiff's Complaint has been  
4 dismissed with leave to amend. No amended complaint has been filed and/or served in  
5 this action. As such, there is no pending claim against Defendant and Defendant is not  
6 required to respond to Plaintiff's discovery request. In this regard, Defendant requested  
7 that Plaintiff acknowledge that no response is required or, in the alternative, grant  
8 Defendant an extension of time to respond to the discovery requests until some time after  
9 Plaintiff files an amended complaint against Defendant, if at all. Plaintiff refused  
10 Defendant's request without explanation. Defendant serves these responses out of an  
11 abundance of caution in the event it is determined that such responses are required despite  
12 the dismissal of Plaintiff's Complaint against Defendant. Otherwise, Defendant reserves  
13 the right to withdraw these responses in total and otherwise object to the use, reference to,  
14 or disclosure of these responses in any manner for any purpose.

15 Brian Dunning ("Mr. Dunning") has invoked his privilege against  
16 self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v.*  
17 *Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of  
18 the California Constitution, and California Evidence Code section 940. Since Mr. Dunning is  
19 the sole shareholder and sole authorized representative of Responding Party, and the only  
20 person who can verify discovery responses on behalf of Responding Party, Responding Party  
21 cannot provide any verified responses without compromising Mr. Dunning's right against  
22 self-incrimination.

23 Should Mr. Dunning determine that there is no longer the threat of potential  
24 criminal prosecution and elect to withdraw his privilege against self-incrimination in the future,  
25 Responding Party expressly reserves the right to supplement its responses.

26 Furthermore, the Federal Bureau of Investigation has seized all documents and  
27 computers, disk drives, hard drives, cell phones and servers containing information potentially  
28 related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this

1 investigation has refused all requests to provide Defendants with a copy of the material seized  
2 by the FBI. Those items and records may contain information responsive to the requests  
3 below, but those items and records are not in the possession, custody or control of Defendants.

4 Without waiving any of the foregoing, Responding Party responds to the  
5 interrogatories below:

6 **RESPONSES**

7 **SPECIAL INTERROGATORY NO. 1:**

8 Identify all persons or entities with knowledge regarding Thunderwood's  
9 participation, manipulation or interaction in any Affiliate Marketing Program including eBay's  
10 Affiliate Marketing Programs including, but not limited to, all methods, techniques and  
11 technologies, software, source code, Javascript and HTML code, used by Thunderwood to  
12 obtain revenue from, or otherwise interact with, participate in or manipulate any Affiliate  
13 Marketing Program.

14 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

15 Responding Party objects to this interrogatory on the grounds that it violates  
16 Mr. Dunning's privilege against self-incrimination pursuant to the Fifth Amendment to the  
17 U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence  
18 Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code  
19 section 940. Responding Party further objects on the ground that this interrogatory is vague  
20 and ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further  
21 objects on the grounds that the term "manipulation" and "manipulate" are vague, argumentative  
22 and conclusory. Responding Party further objects that to the extent this interrogatory seeks  
23 information related to programs other than eBay's Affiliate Marketing Program, the  
24 interrogatory is neither relevant to the subject matter of this action, nor reasonably calculated  
25 to lead to the discovery of admissible evidence. Responding Party further objects to this  
26 interrogatory on the ground that it seeks production of trade secrets or other confidential  
27 information.

28 / / /

1 **SPECIAL INTERROGATORY NO. 2:**

2 Identify all Internet Forums at, within or through which Thunderwood discussed  
3 any aspect of their participation in, manipulation of or interaction with eBay's Affiliate  
4 Marketing Programs, or any other Affiliate Marketing Program.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

6 Responding Party objects to this interrogatory on the grounds that it violates  
7 Mr. Dunning's privilege against self-incrimination pursuant Fifth Amendment to the U.S.  
8 Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule  
9 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section  
10 940. Responding Party further objects on the ground that this interrogatory is vague and  
11 ambiguous, overbroad, unduly burdensome and oppressive. Responding Party further objects  
12 that to the extent this interrogatory seeks documents related to programs other than eBay's  
13 Affiliate Marketing Program, the interrogatory is neither relevant to the subject matter of this  
14 action, nor reasonably calculated to lead to the discovery of admissible evidence. Responding  
15 Party further objects on the grounds that the term "manipulation" is vague, argumentative and  
16 conclusory. Responding Party further objects to this interrogatory on the ground that it seeks  
17 production of trade secrets or other confidential information.

18  
19 DATED: February 26, 2009

RUS, MILIBAND & SMITH  
A Professional Corporation

20  
21 By: 

22 LEO. PRESIADO  
23 Attorneys for Defendants  
24 Thunderwood Holdings, Inc., Brian Dunning  
25 and BrianDunning.com  
26  
27  
28

1 **PROOF OF SERVICE**

2 *eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
3 *Northern District of California, San Jose Division*  
4 *Case No. C 08-4052 JF*

5 STATE OF CALIFORNIA )  
6 ) ss.  
7 COUNTY OF ORANGE )

8 I am employed in the County of Orange, State of California. I am over the age  
9 of 18 and not a party to the within action; my business address is 2211 Michelson Drive,  
10 Seventh Floor, Irvine, California 92612.

11 On February 26, 2009, I served the foregoing documents described as  
12 **RESPONSES OF DEFENDANT THUNDERWOOD HOLDINGS, INC. TO FIRST SET**  
13 **OF INTERROGATORIES PROPOUNDED BY PLAINTIFF EBAY, INC.** on the interested  
14 parties in this action by placing a copy thereof enclosed in sealed envelopes addressed as  
15 follows:

16 SEE ATTACHED SERVICE LIST

17 ☒ As follows: I am "readily familiar" with the firm's practice of collection and processing  
18 correspondence for mailing. Under that practice, it would be deposited with U.S.  
19 Postal Service on that same day with postage thereon fully prepaid at Irvine, California  
20 in the ordinary course of business. I am aware that on motion of the party served,  
21 service is presumed invalid if postal cancellation date or postage meter date is more than  
22 one day after date of deposit for mailing in affidavit.

23 ☐ (By E-Mail) As follows: I caused the above-referenced document(s) to be transmitted to  
24 the above-named persons.

25 ☐ (By Facsimile) As follows: I caused the above-referenced document(s) to be transmitted  
26 to the above-named persons by facsimile.

27 ☐ (By Hand Delivery) As follows: I caused the above-referenced document(s) to be hand  
28 delivered to the above-named persons.

☐ (By Overnight Delivery) As follows: By overnight delivery via Overnite Express  
and/or Federal Express to the office of the addressee noted on the attached service list.

Executed on February 26, 2009, at Irvine, California.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court  
at whose direction the service was made.

  
RHONDA RADFORD

**SERVICE LIST**

*eBay, Inc. v. Digital Point Solutions, Inc., et al.*  
*Northern District of California, San Jose Division*  
*Case No. C 08-4052*

David R. Eberhart  
Sharon M. Bunzel  
Colleen M. Kennedy  
O'Melveny & Myers  
Two Embarcadero, 20<sup>th</sup> Floor  
San Francisco, CA 94111  
Tel: (949) 984-8700  
Fax: (949) 984-8701  
Email: [deberhart@omm.com](mailto:deberhart@omm.com), [sbunzel@omm.com](mailto:sbunzel@omm.com)  
*Attorneys for Plaintiff eBay, Inc.*

Stewart H. Foreman  
Freeland, Cooper & Foreman, LLP  
150 Spear Street, Suite 1800  
San Francisco, CA 94105  
Tel: (949) 541-0200  
Fax: (949) 495-4332  
Email: [foreman@freelandlaw.com](mailto:foreman@freelandlaw.com)  
*Attorneys for Defendants Todd Dunning and Dunning Enterprises, Inc.*

Seyamack Kouretchian  
Coast Law Group. LLP  
169 Saxony Road  
Suite 204  
Encinitas, CA 92024  
Tel: (760) 942-8505  
Fax: (760) 942-8515  
Email: [seyamack@coastlawgroup.com](mailto:seyamack@coastlawgroup.com)  
*Attorneys for Digital Point Solutions, Inc. and Shawn Hogan*

Patrick K. McClellan  
Law Offices of Patrick K. McClellan  
2211 Michelson Drive, Suite 700  
Irvine, California 92612  
Tel: (949) 261-7615  
Fax: (949) 851-2772  
Email: [pkellymc@pacbell.net](mailto:pkellymc@pacbell.net)  
*Attorney for Kessler's Flying Circus*